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The position of the defendant should be the moral equivalent of that of a wilful wrongdoer if the rule of policy denying relief to a negligent plaintiff is to become non-effective.

EFFECT UPON FORECLOSURE SALE OF THE DEATH OF MORTGAGOR BEFORE CONFIRMATION. A common statute provides that upon default of payment by the mortgagor, the mortgagee may file a petition or commence *scire facias* proceedings for foreclosing the equity of redemption. By the decree or judgment thereunder a new date is fixed on or before which the mortgagor may redeem, and at which, if the mortgagor has not redeemed, the realty will be sold by an officer of the court and the proceeds applied to the payment of the debt. In some states, where foreclosure is accomplished by the sale under *scire facias* proceedings, no confirmation is required. More commonly, however, confirmation is necessary. In case the mortgagor dies during these proceedings, the validity of the foreclosure has been recently questioned. *Effect upon a Foreclosure Sale of the Death of the Mortgagor before Confirmation*, by Edward M. Winston, 58 Central L. J. 103 (Feb. 5, 1904). Until the confirmation of the sale, it is contended, the mortgagor's interest continues. Since an estate will accordingly pass to the heir on the death of the mortgagor, Mr. Winston concludes that the foreclosure is invalid, unless the heir is made a party to the proceedings. The fact that a contrary rule has been generally adopted and the reason for its adoption are ignored by Mr. Winston.

The essential nature of foreclosure proceedings requires that the holder of the equity of redemption be a party to the decree. If before the decree is rendered, therefore, the mortgagor dies and proceedings are not revived against the heir, the decree and any sale thereunder are plainly void. *Hunt v. Acre*, 28 Ala. 580. If, however, the mortgagor dies after the decree is rendered, it has been held that reviver against his successor is not necessary to the validity of subsequent proceedings. *Hays v. Thomae*, 56 N. Y. 521; *Trenholm v. Wilson*, 13 S. C. 174. Support for this view is sought in the rule that a decree obtained in the lifetime of the defendant-party may be enrolled after his death. See *Harrison v. Simons*, 3 Edw. (N. Y.) 394, 395. This analogy between enrollment and the confirmation of a foreclosure sale, it is submitted, is fallacious. Enrollment is a non-discretionary and ministerial act. *Sheffield v. Duchess of Buckingham*, West 673. The confirmation of the foreclosure sale by the court, on the other hand, is the definitive act in the foreclosure proceedings. The foreclosure sale passes no title to the purchaser. *Woehler v. Endter*, 46 Wis. 301. Only upon the confirmation of the sale, which rests entirely within the discretion of the court, does title pass to the purchaser. *Brown v. Isbell*, 11 Ala. 1009. When the equity of redemption is finally foreclosed, the holder, it would seem, should be before the court. One jurisdiction has already held that, upon the death of the mortgagor before the foreclosure sale, reviver is necessary against his successor. *Glenn v. Clapp*, 11 G. & J. (Md.) 1. Upon principle it seems sound, as Mr. Winston contends, to make reviver of proceedings against the successor essential to the validity of the foreclosure, when the mortgagor dies at any time before the confirmation.

MALICIOUS TORTS.—The attempt is made in a suggestive and noteworthy article of recent date, remarkable for its keen analysis and its accuracy of expression, to separate and distinguish the different kinds of questions that may arise in a case of malicious tort. *Malicious Torts*, by Henry T. Terry, 20 L. Quart. Rev. 10 (Jan., 1904). The author begins with an elaborately wrought discrimination between the various kinds of rights and duties recognized in the law. To each legal right corresponds a particular kind of legal duty. When a breach of the corresponding duty results proximately in a violation of a right, a